

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

170 WRIT PETITION NO. 12709 OF 2021

Pallavi Constructions
A partnership firm having its
Registered office at
Plot No.84/83, Kalyan Nagar,
Basmath Road, Parbhani – 431 401
Through its authorized Partner:
Mr. Sudhakar Ganeshrao Patil
Age : 61 years, Occ : Business,
R/o Plot No.84/85, Kalyan Nagar,
Basmath Road, Parbhani – 431 401,
Tq. & Dist. Parbhani

..PETITIONERS

-VERSUS-

1. The State of Maharashtra
Through the Secretary
Department of Urban Development,
Mantralaya, Mumbai – 32
2. The Director,
Directorate of Municipal Administration,
Government Transport Services Building,
3rd Floor, Sir Pochakhanwala Road,
Worli, Mumbai.
3. The District Collector,
Parbhani, Tq. & Dist. Parbhani.
4. The Municipal Council, Gangakhed,
office at Municipal Council, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
5. The Chief Officer,
Municipal Council, Gangakhed,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

..RESPONDENTS

AND
WRIT PETITION NO. 12769 OF 2021

Pallavi Constructions
A partnership firm having its
Registered office at
Plot No.84/83, Kalyan Nagar,
Basmath Road, Parbhani – 431 401
Through its authorized Partner:
Mr. Sudhakar Ganeshrao Patil
Age : 61 years, Occ : Business,
R/o Plot No.84/85, Kalyan Nagar,
Basmath Road, Parbhani – 431 401,
Tq. & Dist. Parbhani

..PETITIONERS

-VERSUS-

1. The State of Maharashtra
Through the Secretary
Department of Urban Development,
Mantralaya, Mumbai – 32
2. The Director,
Directorate of Municipal Administration,
Government Transport Services Building,
3rd Floor, Sir Pochakhanwala Road,
Worli, Mumbai.
3. The District Collector,
Parbhani, Tq. & Dist. Parbhani.
4. The Municipal Council, Gangakhed,
office at Municipal Council, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
5. The Chief Officer,
Municipal Council, Gangakhed,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

..RESPONDENTS

AND
CIVIL APPLICATION NO. 12996 OF 2021
IN
WRIT PETITION NO. 12709 OF 2021

M/s J.K. Construction and Company
Through its Partner
Khan Jafarkhan Usmankhan
Age : 55 years, Occ : Business,
R/o Azadnagar, Beed,
Tq. & Dist. Beed.

..APPLICANT

-VERSUS-

1. Pallavi Constructions
A partnership firm having its
Registered office at
Plot No.84/83, Kalyan Nagar,
Basmath Road, Parbhani – 431 401
Through its authorized Partner:
Mr. Sudhakar Ganeshrao Patil
Age : 61 years, Occ : Business,
R/o Plot No.84/85, Kalyan Nagar,
Basmath Road, Parbhani
2. The State of Maharashtra
Through the Secretary
Department of Urban Development,
Mantralaya, Mumbai – 32
3. The Director,
Directorate of Municipal Administration,
Government Transport Services Building,
3rd Floor, Sir Pochakhanwala Road,
Worli, Mumbai.
4. The District Collector,
Parbhani, Dist. Parbhani.
5. The Municipal Council, Gangakhed,
office at Municipal Council, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

6. The Chief Officer,
Municipal Council, Gangakhed,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

..RESPONDENTS

AND

CIVIL APPLICATION NO. 12995 OF 2021
IN
WRIT PETITION NO. 12769 OF 2021

M/s J.K. Construction and Company
Through its Partner
Khan Jafarkhan Usmankhan
Age : 55 years, Occ : Business,
R/o Azadnagar, Beed,
Tq. & Dist. Beed.

..APPLICANT

-VERSUS-

1. Pallavi Constructions
A partnership firm having its
Registered office at
Plot No.84/83, Kalyan Nagar,
Basmath Road, Parbhani – 431 401
Through its authorized Partner:
Mr. Sudhakar Ganeshrao Patil
Age : 61 years, Occ : Business,
R/o Plot No.84/85, Kalyan Nagar,
Basmath Road, Parbhani
2. The State of Maharashtra
Through the Secretary
Department of Urban Development,
Mantralaya, Mumbai – 32
3. The Director,
Directorate of Municipal Administration,
Government Transport Services Building,
3rd Floor, Sir Pochakhanwala Road,
Worli, Mumbai.

4. The District Collector,
Parbhani, Dist. Parbhani.
5. The Municipal Council, Gangakhed,
office at Municipal Council, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
6. The Chief Officer,
Municipal Council, Gangakhed,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

..RESPONDENTS

...

Mr.R.N. Dhorde, Senior Advocate a/w Mr.P.S. Dighe
i/b Mr.D.R. Jethliya, advocate for the
petitioners.

Mr.D.R. Kale, Incharge G.P. for respondent/State.
Mr.S.V.Mundhe, Advocate for respondent nos.4 & 5.
Mr.R.S. Deshmukh, Senior Advocate a/w
Mr.Indraneel Godsay i/b Mr.P.D. Bachate, Advocate
for the intervenors.

...

CORAM : S.V. GANGAPURWALA
AND
S.G. DIGE, JJ.

DATE : 20th DECEMBER, 2021

PER COURT :-

. The Municipal Council floated e-tender for construction of CC Road, CC Drain and Paving Blocks, so also for Footpath and B.T. road. The petitioner in both the Writ Petitions was found to be lowest bidder and was awarded the contract. Agreement was entered into between the petitioner and the Municipal Council through its Chief Officer on or about 28th October, 2021. The work order was also issued to the petitioner on or about 29th October, 2021. On or about 1st November,

2021, the Chief Officer, Municipal Council issued a Corrigendum thereby cancelling the tender. The same is assailed in the present Writ Petitions.

2. Mr. Dhorde, learned Senior Advocate submits that after following due decision making process, the petitioner is issued with the work order. Agreement is also executed. The petitioner also deposited the security deposit. Two days after the work order is issued, the tender is cancelled without assigning any reason. The concluded contract existed between the petitioner and the Municipal Council. Arbitrarily, the Municipal Council could not have cancelled the contract. The learned Senior advocate further submits that the only reason mentioned was that the petitioner had not submitted the GST and ISO certificates along with the tender document. The petitioner had submitted a GST certificate. The ISO certificate was not submitted. The same was not material condition. On 26th October, 2021, the petitioner was directed to submit the ISO and GST certificates. Though the GST certificate was submitted earlier, on the same day i.e. on 26th October, 2021, the petitioner submitted the ISO certificate also. The submission of ISO certificate was not mandatory requirement. The petitioner has substantially complied with the terms of the tender.

3. As the petitioner has substantially complied with the terms of the tender, the tender of the petitioner was accepted. To substantiate his contention that the compliance of the substantial terms of the tender is sufficient, the learned Senior Advocate relies upon the judgment of Hon'ble Apex Court in the case of **Bharat Coking and others V/s AMR Dev Prabha and others** reported in (2020) 16 SCC 759 and another judgment in the case of **B.S.N. Joshi & Sons Ltd. V/s Nair Coal Services Ltd., and others** reported in (2006) 11 SCC 548 so also the judgment of the Division Bench of this Court in the case of **R. Venkatesh V/s State of Goa and others in Writ Petition Nos.1114 of 2016 and Writ Petition No. 718 of 2018** decided on 05.03.2020.

4. The learned Senior Advocate further submits that the Scrutiny Committee had evaluated the technical bid. The Scrutiny Committee consisted of four members. They found all the documents in order. In the evaluation chart of the Scrutiny Committee, the requirement of ISO certificate was not mandatory and the same was also not provided in the evaluation chart. After accepting the tender of the petitioner, it is erroneous to cancel the tender process. The tender process is cancelled on the intervention of Ex.M.L.A. The objection was not raised to the technical bid of the petitioner by other

tenderers. According to the learned Senior Advocate, the impugned Corrigendum deserves to be set aside being arbitrary. It is also bad in law on account of non-adherence to the principles of natural justice.

5. Mr.Mundhe, learned advocate for the Municipal Council submits that the Chief Officer had issued the work order in favour of the petitioner, but later on Ex.M.L.A. of Gangakhed Constituency and J.K. Construction, 2nd lowest bidder, have raised objection and they made grievance. They raised 8 types of objections, and therefore, the then Chief Officer cancelled the work order. When the fresh tender notice would be issued, the petitioner can apply for the same.

6. Mr.Deshmukh, learned Senior Advocate for the intervenors and one of the bidder submits that the documents enlisted in the check list accompanying tender documents were mandatory to be submitted. Failure to submit all the documents entail rejection of the technical bid. Admittedly, the petitioner had not submitted ISO certificate, that was sufficient to cancel the contract and to declare the petitioner to be ineligible to participate in the tender process. Not only that, the other documents in the check list did not find place. Learned senior Advocate submits that the documents such as agreement

placed on record were dubious, same did not inspire confidence. All these aspects were brought to the notice of the Chief Officer and then the contract has been legitimately cancelled. The learned Senior Advocate further refers to the discrepancies in the dates. It is submitted that the technical bid is shown to have been opened on 25th October, 2021, but the date below the signatures of the members of the Scrutiny Committee demonstrate that they have signed on 26th October, 2021 and the signature of the Chief Officer also differs. It is further submitted that evaluation chart prepared by the members of the Scrutiny Committee was itself defective. The non-compliance of these aspects rendered the tender process faulty and whole tender process is vitiated.

7. The learned Senior counsel has relied upon section 93 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 to submit that the Chief Officer could not have issued the work order to the petitioner without concurrence of the Standing Committee as the work order is for more than amount of Rs.3 Crores.

8. We have considered the submissions.

9. After the Scrutiny Committee has

evaluated the tender and the financial bids were opened, the petitioner was found to be lowest bidder. The agreement was executed between the petitioner and the Municipal Council through its Chief Officer and the work order was also issued to the petitioner on or about 29th October, 2021. On or about 1st November, 2021, the work order issued in favour of the petitioner, is cancelled. The same was cancelled under the Corrigendum. The reason mentioned in the Corrigendum cancelling the tender was that the documents of the tenderers were not properly scrutinized and verified, as such on technical ground the tenders are cancelled. Save and except above, no other reason is mentioned. Corrigendum is as vague as it could be. We could have understood, if the Chief Officer communicated the discrepancies to the petitioner pointing out that the non-submission of the relevant documents renders petitioner ineligible, however, the Chief Officer only mentioned that the contract documents were not properly verified and on such technical ground, the tenders are cancelled.

10. It ought to have been considered that the work order was already issued in favour of the petitioner. Agreement was also executed pursuant to the tender process. If the flaws in the tender and documents have not been verified, it would be incumbent upon the Chief Officer to

intimate the successful bidder of the reasons for cancelling the work order. In the present case, the said exercise has not been adhered to.

11. If the basic requirements are not adhered to, the tender process naturally stands vitiated. However, after agreement is entered into and the work order was issued in favour of party a right is created in a party and concluded contract comes into existence. More particularly, pursuant to the agreement, the petitioner has also deposited the security deposit as required under the tender. In such scenario, if the Municipal Council is of the opinion that there is large scale deficiencies in the tender process or the decision making process is faulty, then certainly the Chief Officer ought to have issued the notice to the petitioner and then could have taken the decision.

12. Though the matter is regarding the cancellation of the work order, inter alia contract between the parties and same is not a quasi judicial act, still the adherence to the principles of natural justice is also required to be adhered to more particularly when concluded contract exist between the parties. The distinction between the quasi judicial act and administrative one has almost obliterated. The principle of natural justice in present matter

ought to be followed.

13. On account of abrupt cancellation of the contract, the action appears to be arbitrary. Arbitrariness has no role in a society governed by rule of law. Arbitrariness is antithesis to justice, equity, fair play and good conscience. Arbitrary action cannot be sustained.

14. Authority, it appears that woke up after the Ex.M.L.A. raised objection. Ex.M.L.A. was stranger to the tender process. We fail to understand the source of his securing the documents and his interest in the Tender. Be that as it may, we are not entering into the rigmarole of the same.

15. No doubt the Chief Officer could have been justified, if there are large scale deficiencies in the documents, in taking the steps, however, the same should have been after adhering to the basic tenets of natural justice.

16. In the light to above, we pass the following order :-

ORDER

- (i) The impugned Corrigendum is set aside.
- (ii) The Chief Officer may issue notice to

the petitioner calling upon explanation from the petitioner, in case, he is satisfied that there are large scale deficiencies and provision of Section 93 are not followed. The opportunity is required to be given to the petitioner before taking final decision.

(iii) The Chief Officer, Municipal Council may issue notice to the petitioner preferably within a period of 7 days setting out the grounds on which intended action is solicited.

(iv) The petitioner shall be given time of 10 days to file reply to the same and thereafter the final decision may be taken preferably within 15 days thereafter.

(v) With the above observations and directions the Petitions stand disposed of.

(vi) In view of the disposal of the Writ Petitions, the Civil Application No.12996/2021 and Civil Application No. 12995/2021 are disposed of.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)